

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on April 7, 2022
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Bruce Wick, Risk Management Director, Housing Contractors of California
Matthew Lugo, DIR Analyst, Office of Director, Legislation and Regulations
Jodie Jones, DOSH Analyst

Minutes of March 17, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the March 17, 2022
Board meeting.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 3-0

New Business:

(The appeals Board hears and discusses new reports presented by staff.)

Action: No report.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Update on of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: The regulatory amendments have been approved and the Public Meeting will be scheduled for June 16, 2022.

2. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: No report.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: Elizabeth Clarke updated the Board on current Legislation.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Chair Lowry shared highlights from the Advisory Committee Meeting.

Board Members Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: Judith Freyman commented that OSHAB's recent training sessions were well attended. She suggested holding the sessions more frequently and on a regular basis.

Marvin Kropke reiterated Ms. Freyman's comments, and expressed gratitude for the hard work put into the training presentation.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood reported on current staff hiring and postings.

Staff Reports:

(Reports from the presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: Judge Reedy updated the Board on current video hearings.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: The Board discussed current scheduling COVID cases and getting unabated serious violations calendared in a timely matter.

4. Litigation update:

Action: Chief Counsel, Jeff Mojcher updated the Board on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Public Comment:

(Public comment will be entertained during discussion of each agenda item of the open meeting.)

Action: The Board received public comments. There was a discussion regarding the COVID case list posted on the website.

The board recessed to its closed session.

Decisions of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

There were no Decisions scheduled for review.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

- 1416143 Webcor Builders, Inc.
Action: The Board granted the Petition for Reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1425896 Wright Tree Service of the West, Inc.
Action: The Board denied the Petition for Reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1443556 Ecobay Services
Action: The Board denied the Petition for Reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

Orders Dismissing Appeal:

- 1324361 GJ Gentry General Engineering, Inc.
Action: The Board reviewed this Order.
- 1475871 Melt De La Paz Inc.
Action: The Board reviewed this Order.
- 1483456 Vista Del Sol Care Center
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal to review.

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each

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of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

- 1141604 Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
Whether adult film performers are employees or independent contractors.
- 1141604 Boy Racer Inc. DBA Burning Angel
(DOSH Petition)
Whether adult film performers are employees or independent contractors.
- 1494822 Ciasom, LLC dba Advoque Safeguard
Whether Employer operated an industrial truck within appropriate limits.
- Action: The Board voted to remand this case.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1332867 Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.
- 1410726 Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.
- 1290766 Millennium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- Action: The Board discussed this morning.
- 1224802 Ranch of the Golden Hawk
Whether the household domestic service exception applies to the tree trimming involved in this matter.
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.

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- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1192534 Shimmick Construction Company Inc.
Whether the employer committed the violation alleged.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a Decision after Reconsideration or a Denial of a Petition for Reconsideration, either one or both parties may apply to the California Superior Court for a Writ of Mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. Ashley Furniture Industries, 34-2017-800002750 (1016514)
4. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)

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14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)
17. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)
23. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: The Board discussed cases with citations related to COVID-19.

4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: No report.

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the Order and decide if they will reconsider or remand the issued order.)

1524918	Acadia Healthcare Company, Inc.
1396631	Advanced Construction Southwest Of California,
1509387	Air Conditioning Solutions, Inc.
1554451	Albert Hodson & Sons
1393753	Anning-Johnson Company
1479039	Armorcast Products Company, Inc.
1548438	Baker Custom Cabinets, Inc.
1480199	Being Alive/People with Aids Action Coalition, Inc.
1451638	Best Contracting Services, Inc.
1491482	Bodega Latina Corporation
1521467	Byram Healthcare Centers, Inc.
1403948	Ca Corrections - Corcoran Sattf
1419776	Cal-City Construction, Inc.
1375660	California Department of Corrections &
1524009	California Department of Transportation
1492129	California Tree and Landscape
1514884	Caritas Management Corporation
1537246	Casa De Las Campanas, Inc.
1525015	Caseworx, Inc.
1532607	Chaffey Joint Union High School District
1490473	Champion Industrial Contractors, Inc.
1492710	Channel Islands Post-Acute
1319499	Charter Communications, Inc.
1463641	Cisco Systems, Inc.
1496743	City Business Shipping, Inc.
1477546	City of El Centro
1376769	City of Los Angeles Department Of General Services
1487974	Classic Distributing and Beverage Group, Inc.
1434221	Comcast of California XIII, Inc.
1489671	Conserve Landcare, Inc.
1503712	County of Riverside
1505021	Crain Walnut Shelling, Inc.
1556211	Davis Wire Corporation
1561672	Del Monte Foods
1549825	Donsuemor, Inc.

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1416949	Elite Roofing Supply SC LLC
1558554	Enzo Caserta Landscaping, Inc.
1490476	Exaro Technologies Corporation
1533692	F.C. and Sons Roofing, Inc.
1557475	Fedex Freight
1486308	Foothill Care Center, Inc.
1501098	Forood Design and Construction, Inc.
1540489	Foster Poultry Farms
1414046	Golden Mattress Manufacturing, Inc.
1410922	Gonsalves & Santucci, Inc.
1413492	Grape Valley Contracting
1547757	Harbert Roofing, Inc.
1568765	Harbert Roofing, Inc.
1555070	Harris Metal Works, Inc.
1515619	Hathaway Dinwiddie Construction Company
1511649	Irvine Ranch Water District
1512020	J J Custom Inc.
1543672	J&R Logging, Inc.
1549120	Karsta Desra Inc
1510298	Komyo America Co., Inc.
1557026	Langetwins, Inc.
1507537	Le Fiell Manufacturing Company
1455061	Lighthouse Roofing and Repair
1551416	Linda County Water District
1568173	Los Angeles County Fire Station 146
1472431	MCM Construction, Inc.
1526541	Michael E. Walsh, General Building Contractor
1489226	Mollie Stone's Market
1550791	Mountains Recreation And Conservation Authority
1254163	National Design Build Services LLC
1501282	Neilmed Pharmaceuticals, Inc.
1551178	Nexstar Media, Inc.
1542572	Noodoe, Inc.
1533625	Nugget Market, Inc.
1502432	O'reilly Auto Enterprises, LLC
1524706	OEC Distribution Services, Inc.
1339350	Pajaro Valley Electric, Inc.
1486114	Pasadena Meadows Nursing Center, LP
1526472	Performance Mechanical, Inc.
1462250	Power Engineering Construction Company

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1546737	Prats Construction, Inc.
1478351	Priority Business Services Inc.
1351343	Quanta Telecom Services, LLC
1565975	Quickpaint
1492125	R & S Overhead Doors Of Inland Empire Inc.
1507860	Rite Aid Corporation #05824
1507861	Rite Aid Corporation #05825
1523494	Robinson Helicopter Company, Incorporated
1549116	Salinas Union High School District
1494402	Samuelson Tingo Construction, LLC
1501289	Santa Clarita Valley Water Agency
1547106	Save Mart Supermarkets
1308243	Segundo Collazos
1473143	SEL Construction Corporation
1532644	Shadow Holdings, LLC
1297007	Skillset Group, LLC
1511650	Slater Custom Painting LLC
1559969	Slobogin Steel & Construction, LLC
1534711	Soup Bases Loaded, Inc.
1544423	Southern California Edison Company
1539488	Souza Dairy
1413427	Standard Drywall, Inc.
1337847	State Of California, Department Of Corrections
1537050	State Of California, Dept. Of Transportation
1513306	Stellar Industrial Solutions, Inc.
1360323	Success Valley Farms, LLC
1423071	Sunny Rose Corporation
1485894	Sutter Bay Hospitals
1203765	Swift Beef Company
1550654	Tawa, Inc. (Retail)
1502416	Tom Malloy Corporation
1430899	Tri Mission Company
1408111	Universal City Studios LLC
1422245	Universal Protection Service, LP
1495523	UVP Management, LLC
1538442	Veritas Medical Solutions
1357770	Webcor Construction, LP
1460289	West Coast Arborists, Inc.
1242614	Wilson Maintenance & Services, Inc.
1491640	Windsor Hampton Care Center, LLC

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1525785	Wolff Contracting, Inc.
1407764	XL Landscaping Development LLC
1407775	XL Landscaping Development LLC
1496904	Yates Glass, Inc.
1568190	Zephyr Industries, Inc.

Action: The Board reviewed and discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 12:04 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The meeting adjourned at 12:05 p.m.